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Peter Collin

State and Perspectives of the History of Social Law – A Few Preliminary Remarks

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Peter Collin

State and Perspectives of the History of Social Law – A Few Preliminary Remarks

Social law is an important cornerstone of the normative constitution of the modern state, if not one the most important. The stability of market-based societies in the current era primarily resulted from both the existence of legally guaranteed provisions against the risks of life and the legal mechanisms that make the social inequalities bearable – or, at the very least, that ensure a minimum standard of living and prevent those affected from being completely excluded from social participation. Social law is, however, not just a stabilizing element for democratically constituted market societies in a normal situation. Over the course of the 20th century, it was also used to great effect by dictatorial and authoritarian regimes as a means of securing power, and it was employed more often in times of war and crisis in order to keep peace within the state, to attenuate or pacify fragile social situations, not to mention to generate social consensus. Throughout all the ups and downs of recent history, social law has remained a key element involved in the shaping of society.

The eminent significance of social law, however, has not garnered the attention it warrants within legal historical scholarship. There are a number of reasons for this situation (the importance attributed to each varying from country to country). First, apart from the older sector of poor relief, which for a long time was only in a very rudimentary sense influenced by law, social law is still a fairly new field of law; in some countries, the first social security systems were developed after the Second World War. Second, in quite a large number of states, social law (or, at least, substantial parts of it) was initially developed only with the needs of the working class in mind and primarily focused on the existence of an employment relationship. A little more time was necessary in order for social law to emancipate itself from labour law and to eventually grow into a separate legal discipline – one capable of being thematised by legal history. Third, social law does not fit into the narrative of the emergence of the constitutional-liberal, (formal) equality-based judicial system; to the contrary, in a certain sense, it represents its antithesis. Finally, from a classical legal historical perspective, social law appeared, on the one hand, lacking in complexity, and, on the other, much too complex. This lack of complexity did not offer sufficient points of contact for a conceptual-systematic engagement with legal doctrine. Social law suffered from over-complexity to the extent that both its regulative multi-dimensionality and special legal technicity made it quite difficult to grasp with the instruments of traditional legal history.

For this reason, it should come as no surprise that attempts to explore the history of social law from an international perspective never really made it past the preliminary stage – and stands in stark contrast to the history of social politics, which has already produced impressive comparative studies. The contributions here represent a first attempt to open up this field of research. Here, we offer an overview of the research landscape in a variety of different scientific communities. The authors report on the state and perspectives of the history of social law in Belgium, Germany, Italy, Japan, Austria, Poland, Russia / Soviet Union and the United States. What comes to light are not just national, but also individual narrative styles and interests. Hopefully, this will suffice for a solid beginning. It is hoped, however, that an international dialogue will develop within legal history; one that will eventually do justice to the significance of this legal area in the formation of modern communities.

■